



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Unison Transformer Services, Inc.
File: B-232434
Date: November 10, 1988

DIGEST

1. Definitive responsibility criterion requiring prior successful "reclassification" of a high concentration PCB transformer to non-PCB status for a minimum of 1 year without performing additional work can be met by submission of evidence of successful reclassification for a shorter time period after which the transformer was tested to determine residual PCB content. A test report, which established that the maximum PCB concentration level permitted could not have been exceeded for a period substantially longer than 1 year, properly may be considered equivalent to the 1 year performance requirement since it establishes that the requirement would have been exceeded.
2. When a responsibility-type factor such as corporate experience is included as a technical evaluation criterion under a request for proposals, it does not constitute a definitive responsibility criterion.
3. Where an offeror represents in its proposal that the resources of a parent company would be available to it during contract performance, the procuring agency properly may consider the experience of the parent company, as well as the subsidiary offeror's experience prior to acquisition, in evaluating the offeror's proposal.
4. Allegation that agency made improper price/technical tradeoff is denied where, contrary to protester's assumption that its proposal was higher technically rated than awardee's, award was made to lower priced offeror whose proposal received a higher technical score.

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DECISION

Unison Transformer Services, Inc., protests the award of a contract to Sun Environmental, Inc., for reclassification of certain PCB (polychlorinated biphenyls) electrical transformers^{1/} to non-PCB status, under request for proposals (RFP) No. 52SBNB8C5085, issued by the National Institute of Standards and Technology (NIST), Department of Commerce. Unison contends that Sun's proposal did not provide sufficient evidence that Sun satisfied certain definitive responsibility criteria contained in the RFP, and that Commerce made an improper price/technical tradeoff in determining to award the contract to Sun.

We deny the protest.

The RFP called for the reclassification of and minor repairs to 86 transformers. Section M of the RFP included a requirement that:

"Prospective contractors will be determined to be non-responsive due to responsibility and . . . not warrant further evaluation of their offer, if the offeror fails to provide evidence to document its successful reclassification of at least one high concentration PCB transformer to non-PCB status for a minimum of one year without 'polishing.'"^{2/}

In addition, under the evaluation criterion for experience, which was the most important technical factor, the RFP called for a minimum of 2 years experience reclassifying high concentration PCB transformers to non-PCB status using an acceptable process.

^{1/} Reclassification is the process by which PCBs are extracted from a transformer and replaced with non-PCB materials. The Environmental Protection Agency (EPA) has established guidelines for reclassification which provide that a transformer is successfully reclassified if for a 90-day period it has a level of less than 50 parts per million (ppm) of PCBs. 40 C.F.R. § 760.30(a)(2)(v) (1987).

^{2/} Polishing refers to additional work to the transformer after a transformer has been reclassified pursuant to EPA regulations.

Four proposals were received by the May 31, 1988, closing date, including Sun's and Unison's. The proposals were evaluated in accordance with the solicitation evaluation factors, which assigned 70 percent of the total score to "quality of service," which included technical factors (experience, safety record, and key personnel) and management, and 30 percent to cost. All four offerors were determined to be in the competitive range and were asked to submit best and final offers (BAFO). Both Sun's and Unison's BAFO prices were slightly under \$2,000,000, but Sun's price was approximately 1 percent lower than Unison's. On August 8, Commerce awarded the contract to Sun on the basis that Sun offered a technically superior proposal which was lowest in price.

The gist of Unison's protest is that Sun did not and could not provide sufficient documentation to establish that it satisfied the definitive responsibility criterion of having successfully reclassified a high concentration PCB transformer to non-PCB status for a minimum of 1 year without polishing.

Definitive responsibility criteria are standards established by a contracting agency in a particular procurement to measure an offeror's ability to perform the contract. Repco, Inc., B-225496.3, Sept. 18, 1987, 87-2 CPD ¶ 272. Such criteria in effect represent the agency's judgment that an offeror's ability to perform in accordance with the specifications for the procurement must be measured not only against the traditional and subjectively rated factors, such as adequate facilities and financial resources, but also against more specific requirements, compliance with which at least in part can be determined objectively. W.H. Smith Hardware Co., B-228576, Feb. 4, 1988, 88-1 CPD ¶ 110; Federal Acquisition Regulation § 9.104-2(a) (FAC 84-39). However, while definitive responsibility criteria establish a minimum standard which is a prerequisite to an affirmative determination of responsibility, we have recognized that there are situations where an offeror may not meet the specific letter of such criteria, but has clearly exhibited a level of achievement either equivalent to or in excess of the specified criteria, and thus properly may be considered to have satisfied the definitive responsibility criteria. Haughton Elevator Division, Reliance Electric Co., 55 Comp. Gen. 1051 (1976), 76-1 CPD ¶ 294.

Unison is correct that Sun did not meet the literal requirement of the definitive responsibility criterion for 1 year of successful performance. Sun submitted evidence of having performed a successful transformer reclassification under a Navy contract, and that the reclassified

transformer remained in non-PCB status for 100 days without polishing. At that time, as indicated in Sun's proposal, the Navy requested that the transformer be drained of its fluid and shipped to a test laboratory for disassembly to determine the total PCB content in the transformer. This testing determined, by analysis of chemical samples, that the total quantity of PCB remaining in the transformer was an amount which, if it were dispersed in the transformer fluid, would add 8.7 ppm of PCB. The PCB level of the transformer fluid after reclassification and immediately before draining had been measured at 24 ppm. Accordingly, the test results established that the total amount of PCB content remaining in the transformer was sufficiently low that, irrespective of time, even if all of the PCB were to leach out simultaneously, the PCB concentration level could not exceed 33 ppm. This is below the acceptable 50 ppm level established by EPA as the upper limit for maintaining non-PCB status. Thus, the test showed that the reclassified transformer would remain below the required PCB concentration level for a period in excess of 1 year. We find that this satisfies the purpose of the definitive responsibility criterion by providing an acceptable equivalent. See Haughton Elevator Division, Reliance Electric Co., 55 Comp. Gen. supra.

With respect to the adequacy of the documentation provided by Sun in its proposal, the scope of our review is limited to ascertaining whether sufficient evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the definitive responsibility criterion had been met. The relative quality of the evidence is a matter for the judgment of the contracting officer. Topley Realty Co., Inc., B-221459, Apr. 23, 1986, 65 Comp. Gen. 86-1 CPD ¶ 398. Further, the extent to which an investigation may be required is a matter for the contracting officer to determine, not our Office. BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309.

As evidence of satisfying the criterion, Sun provided a description of the reclassification and a summary of the test described above. In this regard, while Unison contends that the transformer reclassified by Sun is smaller than those which are to be reclassified under the RFP, the definitive responsibility criterion has no size requirement, therefore, the size is not relevant. Sun's proposal included the test data which showed that the transformer would remain in a non-PCB status irrespective of time. Further, Sun provided the name and telephone number of the Navy contracting officer who supervised the contract under which the reclassification and laboratory analysis was performed, and this contracting officer verified Sun's

information when contacted by Commerce. Accordingly, we find that Sun's proposal contained adequate documentation from which Commerce could reasonably conclude that Sun satisfied the definitive responsibility criterion. While Unison has alleged that there is other outside information available which may call into question the acceptability of the transformer reclassification which was described by Sun, our Office will not reevaluate the quality of the evidence submitted by Sun, or question the contracting officers judgment in this regard. Allen-Sherman-Hoff Co.--Request for Reconsideration, B-231552.2, Sept. 1, 1988, 88-2 CPD ¶ 202.

Unison has also protested that Sun did not satisfy the RFP requirement for 2 years of experience in reclassifying transformers which is contained in the technical evaluation criteria. As Commerce correctly argues, this experience requirement does not constitute a definitive responsibility criterion. Such a responsibility type criterion properly may be included in a negotiated procurement as a technical criterion, and here it was so included as an evaluation factor. Consulting and Program Management, B-225369, Feb. 27, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 229.

Unison's argument in this regard is that Sun cannot have 2 years of corporate experience because it was not incorporated until November 1987. The record establishes that this allegation is factually incorrect. The Dun and Bradstreet report which Unison submitted in support of this proposition merely shows that Sun was acquired by ENSR Corporation in 1987. However, Sun was an operating entity in its own right prior to that date. Sun's proposal evidences that it was incorporated in 1976 and had several years of corporate experience in reclassifying transformers prior to its acquisition by ENSR. In addition, since the offer committed the resources of ENSR, Commerce was also entitled to consider ENSR's corporate experience in reclassifying transformers, which was also outlined in Sun's proposal, in evaluating Sun's experience in this regard. See J.A. Jones Construction Co., B-227296, Sept. 1, 1987, 87-2 CPD ¶ 215. Accordingly, we find that Commerce had a reasonable basis to determine that Sun was highly qualified with respect to the experience requirement under the technical evaluation criteria, and this determination was not in violation of statute or regulation.

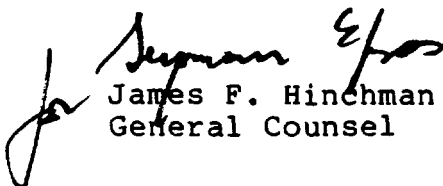
Finally, Unison asserts that the determination to award to Sun was not in accordance with the evaluation criteria which indicated that technical factors were more than twice as important as cost. In support of this argument, Sun points out that the price difference between the two proposals was

minimal. However, while Sun is correct with respect to the price differential, the agency report shows that although the technical scores of the two offerors were very close, Sun received a slightly higher point score than Unison, and was considered technically superior.

Unison is basing its argument regarding its technical superiority on the premise that since Sun was incorporated in 1987 it must have received a low technical score for experience. However, as indicated above, this premise is incorrect, as is Unison's inference regarding the relative scores of the two offerors. Accordingly, there is no basis to question the price/technical tradeoff since award was, in fact, made to the lower priced, higher technically rated proposal.

The protest is denied.

Since we deny the protest, Unison's request for the costs of pursuing its protest, including attorneys' fees, and proposal preparation costs is denied. Fairchild Weston Systems, Inc., B-229843.2 et al., June 3, 1988, 88-1 CPD ¶ 525.


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